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# COMMITTEE OF THE WHOLE

## SUMMARY RECORD OF THE 30th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Thursday, 9 July 1998, at 3 p.m.

*Chairman*: Mr. IVAN (Romania)
*later*: Mr. P. KIRSCH (Canada)

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*The meeting was called to order at 3.10 p.m.*

**CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.7, L.20, L.47/Add.1, L.51 and L.53; A/CONF.183/C.1/WGPM/L.2/Add.4)**

*Part 5 of the draft Statute* (*continued*)

1. **Ms. FERNANDEZ de GURMENDI** (Argentina), Chairman of the Working Group on Procedural Matters, introduced the Group's report contained in document A/CONF.183/C.1/WGPM/L.2/Add.4, in which the Group submitted to the Committee of the Whole the following articles: article 57; article 57 *bis*, paragraph 1, paragraph 2 and subparagraphs (a), (b) and (c) of paragraph 3.

2. **The CHAIRMAN** asked whether he could take it that the Committee of the Whole agreed to refer the provisions contained in the report to the Drafting Committee.

3. *It was so decided.*

*Part 11 of the draft Statute* (*continued*)

4. **Mr. RAMA RAO** (India), Coordinator for Part 11, said that further informal consultations had been held on article 102, paragraph 5. Document A/CONF.183/C.1/L.47/Add.1, which was self-explanatory, contained a revised version of that paragraph, which he commended to the Committee of the Whole.

5. **The CHAIRMAN** asked whether he could take it that the Committee of the Whole agreed to refer the proposed text for article 102, paragraph 5, to the Drafting Committee.

6. *It was so decided.*

*Part 2 of the draft Statute* (*continued*)

7. **Mr. SALAND** (Sweden) said that he would respond to the questions posed by the Chairman at the previous meeting. His delegation had always favoured a unified regime for acceptance of the jurisdiction of the Court, and he supported article 7, paragraph 2, as it appeared in the discussion paper prepared by the Bureau (A/CONF.183/C.1/L.53). There should be automatic jurisdiction for core crimes, but an opt-in system would be appropriate for treaty crimes if they were included in the Statute. He was firmly opposed to any regime based on ad hoc State consent.

8. The question concerning the exercise of jurisdiction related to cases referred by a State party or investigation initiated by the Prosecutor. He favoured option 1 for article 7, paragraph 1, but supported the idea that the notion of "custody" should be replaced by the notion of being present in the territory of a State.

9. On the third question, he was in favour of a *proprio motu* role for the Prosecutor. Article 12 as currently drafted had the right balance between the power of the Prosecutor and the checks which judicial review by the Pre-Trial Chamber would give. He saw certain overlaps with article 16, and the relationship between the various articles

touching on admissibility must be considered. He welcomed, however, the very balanced way in which the material grounds for inadmissibility were stated in article 15.

10. On the fourth question, he was perfectly happy for the Security Council to refer situations to the Court in the exercise of its powers under Chapter VII of the United Nations Charter. On balance, he also supported the Security Council having the power to request deferral; there would be some merit in coordinating action by the Council and the Court. He was very much in favour of option 1 in paragraph 2 of article 10. However, the Council decision on deferral should be made by way of the adoption of a resolution.

11. **Mr. ONKELINX** (Belgium) supported option 1 for article 6, subparagraph (c), and option 1 for article 12. Regarding article 7, his delegation had always been in favour of automatic jurisdiction of the Court over States parties to the Statute. As a compromise, he accepted option 1 for paragraph 1. He was concerned that article 7 *bis* would give States parties the possibility to refuse consent, something he found alien to the concept of the functions of the Court.

12. In article 10, he was in favour of option 1 for paragraph 1, provided that agreement was reached on the definition of aggression. In paragraph 2, he was in agreement with the spirit of option 1 and could accept option 2. He recalled that his delegation had proposed an amendment (A/CONF.183/C.1/L.7) to ensure that evidence could be preserved during the period of suspension of proceedings in the Court. There were four essential principles involved. The first was the principle of suspension of the work of the Court; the second was the formal character of the relevant Security Council decision; the third was the limit on the duration of the suspension; and the fourth was the possibility of preserving evidence.

13. Article 15 on admissibility should be maintained in its entirety because it gave the best expression to the key concept of complementarity. He still had serious reservations about the proposed article 16.

14. **Mr. ROBINSON** (Jamaica), responding to the Chairman's first two questions, said that in addition to the core crimes the Court should also have jurisdiction over treaty crimes. Automatic jurisdiction would be reasonable for core crimes, but universal participation would in practice be enhanced by an opt-in or consent regime. He supported option 3 for article 7, paragraph 1, but proposed the addition at the end of (b) of the phrase "in accordance with international law". The Court should not have jurisdiction on the basis of an unlawful arrest. Jurisdiction in respect of treaty crimes should be based on the opt-in formula in article 7 *bis*. Article 7 *ter* should be reformulated, since it appeared to impose an obligation on States that were not parties to the Statute, which would be odd.

15. On the third question, he doubted very much whether the *proprio motu* power of the Prosecutor would yield the anticipated benefits—possibly quite the reverse—but he was prepared to join in any consensus on the issue.

16. On the fourth question, while recognizing the pre-eminent role of the Security Council in "Chapter VII" matters, he could not accept a relationship between the Council and the Court that would jeopardize the latter's independence. Option 1 for paragraph 1 and for paragraph 2 of article 10 would link the exercise of the Court's jurisdiction to decisions by the Council in a way which would jeopardize its independence. He was particularly concerned about option 1 for paragraph 2, which raised the possibility of repeated requests to the Court for deferral of an investigation or prosecution. The solution was for the Court to decide itself as to its jurisdiction, as provided for in article 17 of the draft Statute (A/CONF.183/2/Add.1). That would put the Court on the same footing as the International Court of Justice which had sometimes had to tackle difficult jurisdictional questions relating to Chapter VII of the Charter. He therefore favoured option 2 in paragraph 1 and option 3 in paragraph 2 of article 10. That did not affect the Security Council's power to refer matters to the Court, although he favoured the General Assembly

having similar powers. He had no difficulty with referral by the Security Council under Chapter VII, but doubted the justification for bypassing the regime of State consent in article 7, paragraph 1, in respect of such referrals. That regime should apply regardless of whether referral was by a State, the Security Council or the Prosecutor.

17. On the question of complementarity, he would accept article 15, but noted with regret that, particularly when read in conjunction with article 16, it would weaken the Court, since it would make proof that domestic remedies had been exhausted a precondition.

18. **Mr. DA COSTA LOBO** (Portugal) supported the principle of automatic jurisdiction.

19. Concerning the Chairman's second question, he would have preferred a system under which no consent was necessary either from States parties or non-parties, but he could, as a compromise, accept option 1 for article 7, paragraph 1.

20. On the third question, he was in favour of the Prosecutor having powers to initiate proceedings *proprio motu*, subject to control by a pre-trial chamber.

21. On the fourth question, he agreed that a matter could be referred to the Court by the Security Council. He could accept option 1 for article 10, paragraph 2, with certain clarifications. The decision of the Council must be a formal resolution. He also supported the addition of a provision such as that proposed by Belgium concerning the preservation of evidence.

22. **Mr. HAFNER** (Austria) considered that the Court must have automatic jurisdiction.

23. Regarding article 7, paragraph 1, he was in favour of option 1. To cover States not parties, article 7 *ter* would be very useful.

24. On the Chairman's third question, the Prosecutor must have power to initiate proceedings *proprio motu*. He could accept article 12, option 1, which took into account the concerns of States opposed to such powers. The acceptability of article 16 would depend not only on the final formulation but also on the outcome of the negotiations on other basic issues.

25. On the fourth question, he could accept option 1 in both paragraphs of article 10. He was, however, open to any drafting changes to paragraph 2 that would not further threaten the Court's independence. In that respect, he saw no need for the broad obligation proposed in article 11, paragraph 3.

26. On the question of complementarity, he hoped that no changes would be made to article 15, which was the fruit of long and hard labours.

27. **Mr. NDIR** (Senegal) said that the Court must have automatic jurisdiction for all the core crimes. With regard to States not parties, universal jurisdiction should be recognized in respect of genocide, crimes against humanity and war crimes. He could accept option 1 in article 7.

28. Concerning the role of the Prosecutor, he could accept option 1 for article 12 as a good basis for compromise. It was essential for the Prosecutor to be able to initiate proceedings ex officio, subject to control by the Pre-Trial Chamber.

29. On the Chairman's fourth question, the Security Council should be able to refer matters to the Court, but it would be preferable for it not to have the power to suspend proceedings. However, he would be prepared to accept option 2 for article 10, paragraph 2, if the period involved did not exceed three, or perhaps six months, and if the suspension was not renewable. Strong provisions should be included for the protection of witnesses and the preservation of evidence.

30. **Mr. BELLO** (Nigeria) wished to see an independent, credible and universally accepted court. He therefore favoured option 2 in article 6 and option 3 in article 7, and supported articles 7 *bis* and 7 *ter*. For article 12, he was in favour of option 2. The checks in the proposed article 12 were not sufficient to guarantee the credibility of the Court.

31. On article 10, he was comfortable with option 1 for paragraph 1. On paragraph 2, he supported option 3; there should be no room for the Security Council to dictate to the Court. In article 11, he preferred option 2, in the interests of the Court's independence. He accepted articles 15, 16 and 17.

32. **Ms. SHAHEN** (Libyan Arab Jamahiriya) favoured express, "opt-in" acceptance of the jurisdiction of the Court and the preconditions proposed in option 1 for article 7, paragraph 1.

33. The role of the Prosecutor should not be inhibited, but there must be built-in checks to limit his or her powers. She was in favour of option 1 for article 12, but had reservations on paragraph 1. She would have preferred the term "ex officio" rather than "*proprio motu*", and proposed the deletion of the last part of the paragraph, beginning with the words "organs of the United Nations ...".

34. She accepted the role of the Pre-Trial Chamber, and article 16.

35. She supported option 2 for paragraph 3 of article 11, to ensure an independent and impartial Court. The Security Council should not have powers over the Court or be able to suspend proceedings for twelve months. Both article 10 and article 6 (b) should be deleted.

36. **Mr. BIHAMIRIZA** (Burundi) supported option 1 for article 6 (c). He would have liked the Statute to confirm the principle of universal jurisdiction for core crimes, but could accept the proposal providing for automatic jurisdiction for genocide, crimes against humanity and war crimes. He was against article 7 *bis*.

37. The Security Council could refer cases to the Court under Chapter VII, but the independence of the Court must not be jeopardized, and he could not agree to option 1 of paragraph 2 of article 10.

38. On article 12, he firmly supported option 1, without which the Court would not be independent or effective.

39. **Ms. MOKITIMI** (Lesotho) said that, if an effective and independent court was to be established, there must be no requirement for State consent with regard to the core crimes, and the Court should have automatic jurisdiction. There should be no requirement that the custodial State, the territorial State or the State of nationality must accept the Court's jurisdiction.

40. She favoured option 1 for article 12. The Prosecutor should be able to initiate investigations *proprio motu* on the basis of information obtained from any source. Judicial review of the decision to commence an investigation would be the task of the Pre-Trial Chamber.

41. Regarding the Security Council, given its responsibilities under the Charter it would have a crucial role to play in referring matters to the Court under Chapter VII.

42. **Ms. TOMIČ** (Slovenia) said that the Court should have automatic jurisdiction in respect of the core crimes of genocide, war crimes and crimes against humanity, upon ratification of the Statute by the State concerned. There should be no subsequent opt-in or State consent regime for any of the core crimes, and she was against article 7 *bis*. She welcomed the provision contained in article 7 *ter* concerning States not parties.

43. Secondly, regarding preconditions for the Court to exercise jurisdiction, she strongly supported option 1 in article 7. She proposed the addition at the end of paragraph 1 (b) of the words "or the State on the territory of which the accused is present". The term "State that has custody of the suspect" could be construed too narrowly.

44. Thirdly, she strongly supported the power of the Prosecutor to act *proprio motu*, including option 1 for article 12, which contained sufficient judicial safeguards. She also supported option 1 for article 6 (c).

45. Regarding article 10, she supported option 1 in both paragraph 1 and paragraph 2. In the latter, she would favour the inclusion of additional wording regarding measures for the preservation of evidence. Article 11, paragraph 3, should be deleted.

46. **Mr. TOMKA** (Slovakia) said that Slovakia had supported automatic jurisdiction from the outset. However, a regime allowing a State to declare that it would not accept the Court's jurisdiction in respect of a particular crime was preferable to an opt-in regime.

47. Concerning preconditions for the exercise of jurisdiction, he fully supported option 1 in article 7. He could agree to giving the Prosecutor power to initiate investigations *proprio motu*, but did not think that that was a precondition for an effective court. Perhaps the issue could be left to be considered during a subsequent review of the Statute.

48. Finally, concerning the role of the Security Council on issues other than aggression, he supported the power of the Security Council referred to in article 6 (b) and also option 1 for article 10, paragraph 2, with the useful addition proposed by Belgium in document A/CONF.183/C.1/L.7.

49. **Mr. MANYANG D'AWOL** (Sudan) said that the inherent jurisdiction of the Court should cover genocide and certain other categories of crime. However, the idea of universal jurisdiction might give States that were not parties to the Statute an advantage over those that were, and lead States not to accede to the Statute. The States whose acceptance was needed as a precondition for the exercise of jurisdiction should be confined to the State on whose territory the act took place and the State which had custody of the person suspected of the crime.

50. The Security Council had a special role in matters relating to the question of aggression, but as far as other issues were concerned the General Assembly could perhaps be allowed to refer matters.

51. **Mr. NGUYEN BA SON** (Viet Nam) said that it was generally accepted that the Court's jurisdiction should be complementary to that of the States concerned. He could therefore accept article 7 *bis*. With regard to article 7, a combination of options 3 and 4 could provide a basis for consensus. The Court could then exercise its jurisdiction when the territorial State, the custodial State and the State of nationality of the accused were parties to the Statute.

52. To give the Prosecutor power to initiate proceedings *proprio motu* was unacceptable, for reasons already explained by his delegation. He therefore supported option 2 for article 6 (c) and option 2 for article 12.

53. His delegation strongly supported the inclusion of the crime of aggression among the core crimes under the jurisdiction of the Court and recognized the rights of the Security Council under Chapter VII of the United Nations Charter. He agreed that the United Nations General Assembly could also have a role.

54. **Ms. O'DONOGHUE** (Ireland) considered that, on becoming a party to the Statute, a State should accept automatic jurisdiction for all the core crimes.

55. As to the preconditions for the exercise of the Court's jurisdiction, she could accept option 1 for article 7, paragraph 1. She firmly supported the Prosecutor having the power to initiate proceedings *proprio motu*; that would be essential for the effectiveness of the Court. She could support option 1 for article 12, which contained adequate safeguards.

56. With regard to the role of the Security Council, the Council should have the power to refer situations to the Court. However, its power to defer or delay proceedings of the Court should be strictly limited to action under Chapter VII of the Charter, and relate to a limited period of time. She could support a solution along the lines of option 1 for paragraph 2 of article 10. She could also support the Belgian proposal for the preservation of evidence in the event of any such delay.

57. On the issue of complementarity, she supported the delicate balance struck in article 15.

58. **Mr. KROKHMAL** (Ukraine) supported automatic jurisdiction with respect to the most serious crimes, including the crime of aggression. The Court's jurisdiction must be effective for all crimes. There would naturally be a problem with automatic jurisdiction in respect of the so-called treaty crimes if they were included in the Statute, as he hoped they would be.

59. Secondly, on the question of which States would be required, as a precondition, to recognize the jurisdiction of the Court, there should be provision for acceptance by States not parties as under article 7 *ter* in the Bureau paper (A/CONF.183/C.1/L.53). That paper did not take sufficiently into account the German proposal based on the concept of universal jurisdiction. However, option 1 in article 7 would not be a bad basis for an agreement.

60. He supported the proposed power of the Prosecutor to act *proprio motu*, and supported option 1 for article 12, which adequately provided both for the independent role of the Prosecutor and for control by the Pre-Trial Chamber.

61. He did not think that there would be any conflict between the Security Council, acting under Chapter VII of the Charter, and the Court. He certainly supported the role of the Security Council in encouraging action by the Court. He had no serious objections to the provision concerning deferral at the request of the Security Council, and supported what had been said by the representatives of Switzerland, the Netherlands and Belgium on that subject.

62. The principle of complementarity should be reflected in the Statute. However, discussion of the issue should be focused on the text proposed for article 16. There should be no unjustified barriers to the exercise by the Court of its jurisdiction.

63. **Mr. KOFFI** (Côte d'Ivoire) said that in ratifying the Statute States should accept the jurisdiction of the Court in respect of the four categories of core crimes, including aggression. It was understood that the principles of

complementarity and *non bis in idem* applied. He therefore supported option 1 in article 6 and also articles 15 and 18. He did not support article 7 *bis*.

64. On the second question, concerning prior acceptance of jurisdiction, he agreed regarding acceptance of the jurisdiction of the Court by the State on whose territory the acts were committed and the custodial State. Without such acceptance, and without the cooperation of both those States, the Court's action might prove futile. He also supported article 7 *ter* on express acceptance by States not parties.

65. On the third question, he was in favour of the power of the Prosecutor to act *proprio motu* on the basis of information obtained from States, international organizations, non-governmental organizations or victims, or indeed from the Security Council. He therefore agreed with option 1 for article 12; the Pre-Trial Chamber would serve as an important control.

66. Concerning the role of the Security Council, he was in favour of option 1 for paragraph 1. He favoured option 1 for paragraph 2, although the wording could be improved to ensure transparency and impartiality.

67. **Ms. DASKALOPOULOU-LIVADA** (Greece) said that the jurisdiction of the Court should be automatic with respect to the crimes covered in the Statute, apart from the treaty crimes, if they were included. In article 7, she supported option 1.

68. Regarding the role of the Prosecutor, she strongly favoured option 1 for article 12, which would give the Prosecutor the power to initiate proceedings *proprio motu*. The Pre-Trial Chamber would provide the necessary safeguard. She also supported article 6 (c).

69. On deferral at the request of the Security Council, she could accept option 1 for article 10, paragraph 2.

70. Article 15 represented a delicate compromise and should remain as it stood. The inclusion of article 16 would not be useful.

71. **Mr. DEGUENON** (Benin) said that his delegation was in favour of the establishment of an independent, effective court, and therefore supported the idea that the Court should have automatic jurisdiction for States parties over all crimes covered in article 5 of the Statute. He was not in favour of article 7 *bis*, but accepted article 7 *ter* with regard to States not parties.

72. He supported the provisions allowing the Prosecutor to act *proprio motu* in article 12, and he firmly supported option 1 for article 6 (c).

73. Regarding the Security Council, he was in favour of option 1 of article 10, paragraph 1, but thought that the reference in the first sentence should be to the "State of which the accused is a national". For paragraph 2, he was in favour of option 2; the revised version of the provision should reduce the period of deferral and allow renewal once only. Appropriate measures should be taken to preserve evidence and to protect witnesses. The General Assembly should also be able to refer cases to the Court.

74. *Mr. P. Kirsch took the Chair.*

75. **Mr. KERMA** (Algeria) was not in favour of automatic jurisdiction of the Court over all the crimes covered by the Statute. When ratifying the Statute, States should indicate for which crimes they accepted the Court's

jurisdiction. For the exercise of jurisdiction, the consent of the following States would be necessary: the State of which the victim was a national, the State where the act had been committed and the State of which the accused was a national. With regard to States not parties, he supported article 7 *ter*.

76. He did not support the power of the Prosecutor to initiate investigations *proprio motu*. Such powers might expose him or her to all sorts of pressures and prevent him or her from carrying out his or her work impartially and independently.

77. While he recognized the importance of the Security Council in maintaining international peace and security under the United Nations Charter, its intervention should be confined to referral of cases to the Court. Parallel to that, the General Assembly should also have the right to refer cases to the Court.

78. **Mr. EFFENDI** (Indonesia) said that he favoured option 2 for article 6 (c) and option 2 for article 12. He supported articles 7 *bis* and 7 *ter*, as well as option 4 in article 7, modified to take account of the deletion of article 6 (c). The Security Council should have a role in relation to the issue of aggression. He favoured the inclusion of articles 15 and 16, which might even be strengthened.

79. **Mr. AZOH-MBI** (Cameroon) said that he would have much preferred universal jurisdiction with respect to all the core crimes, but would settle for automatic jurisdiction. The opt-in regime would run counter to the fundamental concept of the Statute. With respect to the preconditions for the exercise of jurisdiction in article 7, he preferred option 1.

80. An efficient and impartial court required a strong prosecutor, and article 12 (option 1) was satisfactory in that respect, since it contained adequate safeguards. He also favoured option 1 for article 6 (c). On admissibility, he favoured option 1 for article 16.

81. Finally, the relationship between the Security Council and the Court should be a matter of cooperation and complementarity. The Council needed the Court to help maintain global peace and the Court needed the Council, in particular, to help enforce its decisions. He therefore favoured option 1 for article 10, paragraph 1.

82. **Mr. ASSHAIBANI** (Yemen) did not support the automatic jurisdiction of the Court. Neither could he support the power of the Prosecutor to initiate investigations *proprio motu*. He strongly supported the inclusion of the crime of aggression as one of the core crimes within the jurisdiction of the Court. The role of the Security Council, under Chapter VII of the Charter, was a complementary one in that respect. The Council should assist the Court by referring matters, but not interfere in its work. He supported a similar role for the General Assembly.

83. **Mr. VERGNE SABOIA** (Brazil) accepted automatic jurisdiction in respect of the crime of genocide. With regard to the other categories of core crimes, there might be a case for some form of opt-in, in the form of a declaration by a State, subsequent to its ratification of the Statute, that it would also accept automatic jurisdiction with respect to one or both of the other categories of core crimes. Brazil would be flexible with regard to automatic jurisdiction over the other core crimes if the provisions on complementarity provided adequate safeguards.

84. For article 7, he preferred option 1. However, to require the consent of the State of nationality of the accused might excessively restrict the jurisdiction of the Court.

85. He strongly supported the power of the Prosecutor to initiate proceedings *proprio motu*, subject to appropriate safeguards. He therefore supported the present draft of article 12. Such a power would fill a potential void if, because

of political or strategic considerations, both the Security Council and States parties felt unable to refer a situation involving the crimes covered by the Statute.

86. He favoured option 1 for article 10, paragraph 1, for article 10, paragraph 2, and for article 6 (c).

87. **Ms. MEKHEMAR** (Egypt) supported automatic jurisdiction over the core crimes, which should include aggression. States not parties to the Statute should not be subject to the Court by virtue of universal jurisdiction, because that would run counter to international law. She supported the idea behind article 7 *bis*, but core crimes and treaty crimes should be dealt with differently. She supported article 7 *ter* and article 8.

88. The Security Council should have the right to refer cases to the Court, but she had strong reservations about any further involvement. Any power to request deferral, if accorded, should be limited to a maximum of twelve months, and requests should not be renewable.

89. With regard to the Prosecutor, article 12 was generally acceptable but should be amended to limit sources of information to official sources.

90. She still had reservations concerning article 15. The Court should not be judge in its own cause. She supported article 16 in principle.

91. **Mr. NYASULU** (Malawi) appealed to delegations to make an effort to achieve compromises. It was unhelpful for powerful countries to attempt to force their point of view on the rest by threatening not to sign the Statute.

92. **Mr. NATHAN** (Israel) said that, as it was not yet clear which crimes were going to be included in the Statute, and some had not so far been adequately defined, he would at that stage opt for the solution proposed in article 7 *bis*. On question 2, the Court should not have universal jurisdiction. The universal nature of a crime did not give a particular body universal jurisdiction. The Statute would confer jurisdiction on the Court by the sovereign consent of States parties. A precondition to the exercise of the Court's jurisdiction should be the adherence to the Statute of specific categories of States. Those States should be the territorial State, the custodial State, and the State of nationality of the accused.

93. The Prosecutor should not have the power to initiate investigations *proprio motu*, since that might weaken rather than reinforce his or her independence by exposing him or her to political pressure and manipulation.

94. Regarding the Security Council, it was essential to include the crime of aggression within the Court's jurisdiction, and he supported option 1 for paragraph 1 of article 10. He favoured option 1 for paragraph 2, which would strike a balance between the proper exercise of the Security Council's functions under the Charter and the functions of the Court. He had no difficulty with the Security Council referring situations to the Court.

95. **Ms. LEHTO** (Finland) considered that the Court should have automatic jurisdiction over all the core crimes. She therefore favoured paragraph 2 of article 7 and the deletion of article 7 *bis*.

96. Concerning the second question, an elaborate regime of complementarity had been evolved in articles 15 and 17, to which article 16 might be added. That had considerably raised the threshold for the exercise of the Court's jurisdiction, with the explicit purpose and effect of highlighting the primacy of national jurisdictions. Conversely, there was a trend towards less onerous and more automatic procedures as far as acceptance and exercise of jurisdiction were concerned. She would caution against trying to reverse that second trend, as that might prevent the

Court from effectively carrying out its tasks. Although none of the options for paragraph 1 of article 7 were without danger in that respect, option 1 seemed to enjoy wide support as a basis for compromise.

97. The Prosecutor should be able to initiate investigations *proprio motu*, subject to appropriate safeguards in the form of judicial control. Article 12 met that need quite adequately.

98. Concerning the Security Council, she would have preferred the "zero option" for paragraph 2 of article 10, but in a spirit of compromise she was prepared to work on the basis of option 1. However, the form of the Security Council decision was important, and the question of preservation of evidence would have to be addressed, along the lines proposed by Belgium.

99. **Mr. GÜNEY** (Turkey) said that the Court should only have jurisdiction where there had been express acceptance and consent through a declaration or through the so-called "opt-in/opt-out" mechanism. With regard to inherent and automatic jurisdiction, such an approach was unrealistic because it did not reflect present realities. For that reason, article 7 *bis* could be a good basis for compromise. Article 7 *ter* should also be retained.

100. The Court's effectiveness depended on the cooperation of States. The State on whose territory the act or omission had taken place, the State with custody of the person who had committed the crime and the State of which the accused was a national must be parties to the Statute or accept the jurisdiction of the Court for the crime in question.

101. To grant the Prosecutor powers to investigate ex officio would be damaging to the principle of complementarity, and he or she would be overwhelmed with complaints of a political nature. He therefore favoured option 2 for article 6 (b) and for article 12.

102. Commenting on article 8, he said that the wording in document A/CONF.183/C.1/L.53 needed some amendment. The agreement to combine articles 8 and 22 in the original draft (A/CONF.183/2/Add.1) had been based on the assumption that the first sentence of the original article 8 ("The Court has jurisdiction only in respect of crimes committed after the date of entry into force of this Statute") would be included.

103. The Security Council had a role under Chapter VII of the Charter, and he was in favour of option 1 for article 10, paragraph 1. He could accept option 1 for paragraph 2 as a compromise.

104. He fully supported article 16 in its present wording.

105. **Mr. TALICE** (Uruguay) said that the exercise of jurisdiction should be within the exclusive domain of the States parties and the Security Council acting under Chapter VII of the United Nations Charter. He therefore did not agree with ex officio powers for the Prosecutor under articles 6 and 12. That did not affect the independence of the Prosecutor, but a complaint by a State or the Security Council would give the Prosecutor the legitimacy that he or she would need to act effectively. His delegation's proposal for article 13 in document A/CONF.183/C.1/L.51, under which States would be given the right to be heard prior to a decision by the Pre-Trial Chamber, offered a possible compromise.

106. Jurisdiction should be based on complementarity and cooperation. How, he wondered, could the Court exercise jurisdiction if the State on whose territory the act had been committed as well as the State of nationality of the accused were not parties to the Statute? He therefore preferred options 2 and 4 in article 7.

107. On acceptance of jurisdiction, the most realistic solution would be to combine the options in articles 7 and 7 *bis* of the document, with automatic jurisdiction for genocide and an opt-in regime for other crimes within the competence of the Court. He agreed with article 7 *ter*. He also fully agreed with the principle of non-retroactivity of the Court's jurisdiction under article 8.

108. The Security Council acted under specific provisions of the Charter to maintain international peace and security. The idea in paragraph 2 of article 10 was that the Council, on the basis of Chapter VII of the Charter, could request the suspension of the proceedings of the Court where it believed that such proceedings might affect its own task of maintaining peace in the world. Such a request would require consensus among the five permanent Members, so that no single Member could use its veto to block the functioning of the Court. He therefore preferred option 1 for paragraph 2 of article 10.

109. He had difficulties with regard to article 15. A harmonious relationship between national systems and the Court would presuppose the existence of clearly established boundaries. He suggested the addition of a new subparagraph in paragraph 1 of article 15 making a case inadmissible if the act in question was based on a decision by a lawfully constituted legislative body under a democratic system. It would of course be up to the Court, not the State concerned, to determine whether it had jurisdiction.

110. **Mr. HERSI** (Djibouti) was in favour of automatic jurisdiction for all crimes under article 5 of the draft Statute, without distinction. Secondly, although he would have preferred the German concept of universal jurisdiction, he would accept option 1, for the reasons put forward by many delegations.

111. He was in favour of an independent prosecutor able to act on his or her own initiative, under the judicial control of the Pre-Trial Chamber.

112. He agreed that the Security Council should play a role in accordance with the provisions of the United Nations Charter in referring situations to the Court

113. **Mr. YAÑEZ-BARNUEVO** (Spain) said that it was absolutely essential that ratification of the Statute should mean the acceptance of the Court's automatic jurisdiction. Article 7 *bis*, providing for an opt-in regime, was not acceptable. On the other hand, article 7 was useful, as it allowed for acceptance of the jurisdiction of the Court by States not parties for given cases. Careful drafting was needed, however, to exclude possible abuse by non-parties. It should also be made clear that such acceptance bound the State to cooperate fully with the Court.

114. In response to the second question, the only proposal he could accept for article 7, paragraph 1, was option 1, based originally on a proposal by the Republic of Korea. The others would curtail the practical scope of the Court's jurisdiction.

115. On the powers of the Prosecutor, he supported option 1 for article 12, which provided the necessary guarantees. To meet the concerns of other delegations, article 6 might perhaps be widened to allow the General Assembly, for example, to refer situations to the Court, but the Prosecutor must be able to act independently in conducting investigations in situations so referred.

116. It was very important to ensure a proper balance in the relationship between the Court and the Security Council, such that the independence of the Court was not impaired while at the same time it could obtain the necessary backing from the Council. With regard to article 10, if the crime of aggression was included in the list of crimes the provision in paragraph 1 must be included.

117. Deferral was a separate matter, and should be dealt with in a separate article. His delegation had submitted a proposal on that point in document A/CONF.183/C.1/L.20. Of the options in the Bureau paper for article 10, paragraph 2, he preferred option 2. The main point was that the Security Council should interfere as little as possible with the work of the Court.

118. In article 11, paragraph 3 was unnecessary. He accepted the proposed article 15 as a working basis, but it needed certain improvements. He still had reservations about article 16.

119. **Mr. POLITI** (Italy) reiterated his support for the automatic jurisdiction of the Court over the core crimes, based on the ratification of the Statute by the States concerned. Paragraph 2 of article 7 should be retained and article 7 *bis* deleted.

120. Secondly, on acceptance of the jurisdiction of the Court, he favoured option 1 of article 7, paragraph 1, with its four alternative jurisdictional links. He also supported article 7 *ter*.

121. Thirdly, the Prosecutor should have the power to initiate investigations ex officio on the basis of information obtained from any source. That was essential if the Court was to operate effectively in the interests of the entire international community. He was therefore in favour of option 1 for article 12, which also provided adequate judicial safeguards against any improper use of that power, and option 1 for article 6 (c).

122. Fourthly, his delegation's position was that, on issues other than aggression, the Security Council should not have the power to block the judicial activity of the Court. Option 1 in paragraph 2 of article 10 offered a possible compromise to which he could agree in substance, but the request to defer should be made by formal resolution of the Security Council, its effects should be limited in time, and the Prosecutor must retain the right to take the necessary measures to preserve evidence during the period of suspension.

123. On admissibility, article 15 represented a delicate balance achieved as the result of some very intensive negotiations, and should be retained as it stood. He still had doubts about the need for article 16, but was ready to work on the text to reach a possible compromise.

124. **Ms. PIBALCHON** (Thailand) supported the notion that the Court should have automatic jurisdiction over all core crimes, once a State became a party to the Statute, without any need for further declaration. She supported article 7, paragraph 2, for all the core crimes, article 7 *bis* with respect to treaty-based crimes and article 7 *ter*.

125. On the Chairman's second question, option 1 for article 7, paragraph 1, would give the Court more opportunity to prosecute the accused than other options. If that option did not secure general agreement, she could agree that the precondition should be acceptance by the territorial State or the custodial State.

126. The role of the Security Council should be recognized in the Statute with regard to the crime of aggression, if it was eventually included. Pending a decision on that issue, she preferred option 1 for both paragraph 1 and paragraph 2 of article 10, with the proviso that the decision to request deferral must take the form of a resolution of the Security Council. Under article 6 (b), the Security Council, acting under Chapter VII of the United Nations Charter, should refer only situations where a crime of aggression had been committed.

127. Lastly, for article 11, paragraph 3, she supported option 1, to avoid any overlap between the work of the Court and that of the Security Council.

128. **Mr. Sayyid Said Hilal AL-BUSAIDY** (Oman) preferred opting in by means of a declaration to automatic jurisdiction. In article 7, he preferred option 1, and he supported the inclusion of articles 7 *bis* and 7 *ter*. Concerning the role of the Security Council, his delegation had already indicated support, with certain provisos, for the inclusion of the crime of aggression in the list of crimes under the jurisdiction of the Court. However, any interference by the Council, a political body, in the administration of justice by the Court should be precluded. A request by the Security Council to the Court to suspend its proceedings should be subject to a non-renewable time limit.

129. The Prosecutor should not have the right to open investigations *proprio motu*, because he or she might be swamped by requests and exposed to political pressures which would jeopardize his or her impartiality. The Prosecutor might be given some degree of latitude in the case of a complaint by a State, subject to a decision of the Pre-Trial Chamber on the basis of evidence presented to it.

130. **Mr. FIFE** (Norway) said that the Court's effectiveness and credibility, in his delegation's view, required it to have automatic jurisdiction over the core crimes: genocide, crimes against humanity and serious war crimes. As a compromise, his delegation was willing to consider option 1 in article 7. He did not find article 7 *bis* useful, but fully supported article 7 *ter*.

131. On the power of the Prosecutor to initiate proceedings *proprio motu*, a number of provisions in the draft Statute offered protection against prosecutorial bias, including provision for control by a pre-trial chamber over investigations. He therefore favoured option 1 for article 12.

132. With regard to the role of the Security Council, he favoured option 1 of article 10, paragraph 2. It struck a fine balance between the independence of the Court and the role of the Council under Chapter VII of the United Nations Charter. The Belgian proposal on preservation of evidence (A/CONF.183/C.1/L.7) was very useful.

133. The current draft for article 15 represented an important compromise and should be retained.

*The meeting rose at 6 p.m.*